

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13591, of St. Luke's P. & E. Church, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3104.44 to continue to operate a parking lot in an R-5-B District at the premises 1514-20 Church Street, N. W., (Square 194, Lots 84, 85, 86 and 87).

Application No. 13592, of St. Luke's P. & E. Church, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3104.44 to continue to operate a parking lot in an R-5-B District at the premises 1053 P Street, N. W., (Square 194, Lots 66, 92, and 93).

HEARING DATE: October 28, 1981
DECISION DATES: December 2, 1981 and January 6, 1982

DISPOSITION: As to No. 13591, the Board, GRANTED the application with conditions by a vote of 5-0 (Connie Fortune, William F. McIntosh, Douglas J. Patton, Walter B. Lewis and Charles R. Norris to GRANT). As to No. 13592, the Board DENIED the application by a vote of 5-0 (Connie Fortune, William F. McIntosh, Douglas J. Patton, Walter B. Lewis and Charles R. Norris to DENY).

FINAL DATE OF ORDER: June 4, 1982

ORDER:

On June 16, 1982, the applicant filed a timely Petition for Reconsideration. The Petition requested the Board to reconsider the denial of the application in BZA No. 13592 and to reconsider the imposition of a condition in BZA No. 13591 prohibiting cars from parking on the lot for more than six hours between the hours of 8:00 A.M. and 6:00 P.M. The applicant further requested the Board to stay the effect of the order as to the denial of BZA No. 13591 and the imposition of the condition cited above in BZA No. 13592.

As to the conditions in BZA No. 13592, the applicant argued that the imposition of the condition regarding parking during the day is beyond the authority of the Board, is invalid to the extent that it attempts to regulate the

business operation of the premises, and would be detrimental to neighborhood residents by preventing them from utilizing the lot for parking. In support of the request, the applicant relies heavily on an alleged order of the Board dated May 5, 1982, in BZA Application No. 13676

The Board notes that when the petition was filed, no Order of the Board had been issued in that application. The material cited by the applicant is from a draft Order submitted by the counsel for the applicant in BZA No. 13676. The draft is not an Order of the Board, and does not reflect the Board's position.

Further, it is a well established principle of zoning law that the Board of Zoning Adjustment may impose reasonable conditions on the granting of an application for a special exception to protect surrounding and nearby property. In BZA Application No. 13017, by Order dated January 28, 1980, in response to the urging of Advisory Neighborhood Commission 2B and upon review of the record in that case, the Board imposed the condition that "There shall be no all-day commuter parking." That case involved the same applicant and the same operation as the subject application. That decision was not contested by the applicant.

In the subject application, the D.C. Department of Transportation, as set forth in Finding of Fact No. 12 of the Order dated June 4, 1982, recommended that the applicant demonstrate to the Board "The measures that will be implemented to enforce the use of short-term parking and the elimination of commuter parking..." The Dupont Circle Citizens Association and ANC2B further expressed concern at the continued use of the lot for commuter parking. The Board notes that in the record of this case, at the request of the Board, the applicant submitted a plan to implement the ban on commuter parking. This plan was nothing more than a recitation of the applicant's pledge to advise the public that no commuter parking would be allowed, a prohibition which the applicant had ignored for more than two years. The Board concluded that it had to design and impose a plan that would be readily understood and administered by the applicant. Based on the Department of Transportation's understanding that commuter parking entails parking for more than six hours, the Board imposed the condition at issue herein.

The applicant's argument as to regulation of business operation is without foundation. The Board's decision clearly regulates the applicant's use of the lot for parking. Since the Zoning Regulations require parking lots to receive Board approval in R-5-B Districts, the operation of the lot can and must be subject to Board review and approval, including the conditions imposed by the Board.

The applicant's argument as to neighborhood input is also without foundation. The lot is not used by neighborhood residents during the period of time for which the condition is applicable. The lot is used as a commercial operation during those hours. Furthermore, there is no support from the neighborhood in the record of the application.

As to the decision in Application No. 13592, the applicant argued that the Board's basis for denying the application was improper. The applicant alleges that the Board had no authority to impose the condition on commuter parking, and may thus not justify the revocation of the special exception on the violation of the condition. The applicant alleges that the Board was incorrect in finding that the applicant was parking cars in public space and that the applicant knowingly, willfully and continuously violated the Board's prior Order. The applicant alleges that the Board's findings regarding the applicant's plan of the parking lot are in error.

As to the commuter parking issue, the Order cited by counsel for the applicant is not an order of the Board, as noted above. As to the opinion of the Corporation Counsel, dated July 6, 1976, it deals with conditions for the SP District which are not applicable in this case and which are no longer in effect in any event. Further, the Corporation Counsel stated "I am not in a position to state an opinion as to whether the record in these cases supports imposition of the proposed condition..." The Board concludes that it is not barred from imposing such a condition, and that the record in the previous case supported the condition in the proceeding. The Board notes that at no time did the applicant challenge the condition banning commuter parking contained in Order No. 13016, dated January 28, 1980.

As to the parking of cars over the lot line, the same applicant and the same operator were the principals in Application No. 13016, wherein the Board took notice of testimony from opposition witnesses about parking of cars over lot lines in public space. The operator testified that he did not realize that such parking was prohibited. As set forth in Finding of Fact No. 12 of the Order in Case No. 13016, dated January 28, 1980, "The operator testified that such oparking would be ceased."

The record in the subject application includes documentary evidence of cars parked over lot lines in public space. The applicant's own Plat of Survey, marked as Exhibit No. 28 of the record, reveals that the lot line is set back from the sidewalk approximately eighteen feet along 15th Street and approximately seventeen feet along P Street. The applicant's contention in the Petition for Reconsideration that the lot extend to the sidewalk line is

rebutted by the applicant's own plat. As to the applicant's allegations regarding the Board's interpretation of the site plan, the Board finds nothing in the petition to compel the Board to reach a different conclusion than that set forth in the earlier Order.

Upon review of the applicant's petition, the Order in Cases No. 13016/13017, the record in the subject cases and the order of the Board dated June 4, 1982, the Board concludes that it has committed no error of fact or law. The argument put forward by the applicant are not persuasive. It is therefore ORDERED that the Petition for Reconsideration is DENIED. The Motions for Stay of the condition in No. 13591 and the decision in No. 13592 pending disposition of the Petition for Reconsideration are therefore MOOT.

DECISION DATE: July 7, 1982

VOTE: 3-1 (Connie Fortune, Douglas J. Patton and Charles R. Norris to DENY; Walter B. Lewis OPPOSED; William F. McIntosh not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: OCT 26 1982

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13591 of St. Luke's P. & E. Church, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3104.44 to continue to operate a parking lot in an R-5-B District at the premises 1514-20 Church Street, N.W., (Square 194, Lots 84, 85, 86 and 87).

Application No. 13592 of St. Luke's P. & E. Church, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3104.44 to continue to operate a parking lot in an R-5-B District at the premises 1503 P Street, N.W., (Square 194, Lots 66, 92 and 93).

HEARING DATE: October 28, 1981

DECISION DATES: December 2, 1981 and January 6, 1982

FINDINGS OF FACT:

1. The property which is the subject of BZA Case No. 13591 is located on the south side of Church Street between 15th and 16th Streets, N.W., and is known as 1514-20 Church Street. The property consists of lots 84-87 and is operated as a parking lot. The parking lot also includes lots 88 and 89, located adjacent to the subject lots to the east. Lots 88 and 89 are not subject to Board approval since they are existing non-conforming uses. The parking lot is located directly to the west of the site of St. Luke's Church.

2. The property which is the subject of BZA Case No. 13592 is located at the northwest corner of the intersection of P and 15th Streets and is known as 1503 P Street, N.W. The property consists of lots 66, 92 and 93, and is operated as a parking lot. The parking lot also includes lots 67, 68, 69 and 94 located immediately to the east and west of the subject lots. Lots 67, 68, 69 and 94 are not subject to Board approval since they are existing non-conforming uses. This parking lot is located directly to the south of St. Luke's Church across a ten foot public alley.

3. Both cases were last before the Board in application Nos. 13016 and 13017, wherein the Board approved the continuation of the parking lots for a two year period by Order dated January 28, 1980.

4. Since the properties in the two cases are in common ownership, are in the same square, are located immediately west and south of the applicant church, and were last approved by the Board as one case, the Board consolidated the two cases for the purpose of public hearing.

5. Both lots together contain approximately 130 parking spaces, with 100 spaces on the P Street lot and thirty spaces on the Church Street lot. The applicant proposes to continue the use of the parking lots. The subject two parking lots have been in existence for some twenty years.

6. The lots serve the needs of the Church on weekends and during evening hours. The lot is leased as a commercial facility during the normal Monday through Friday work hours. The lot is also used by neighborhood residents at other hours.

7. The hours of operation of the lots for commercial purposes are from 7:00 A.M. to 6:00 P.M. The lot is attended during these hours. There is stacked parking. The lot is unsecured at other hours.

8. The present lessee of the lots has been in operation for the last two years. He and the attendant clean the lots everyday. He has received no complaints about the operation and maintenance of the lots.

9. Between fifty and sixty percent of the customers are commuter parkers. The lessee-operator of the lots was aware that the prior Order of the Board continued as Condition "b" that there shall be no all-day commuter parking. The operator testified that since his time as lessee he has gradually reduced the number of commuter parkers.

10. The 1500 blocks of Church and P Streets are predominantly residential in character, although there are some commercial uses in these blocks. Some of the residential units in these blocks have been substantially renovated and upgraded in recent years. There is an SP zone district along both sides of 16th Street, less than one block to the west. This area contains a mixture of office and residential uses. There is a C-M-3 District east of 15th Street which contains additional commercial uses as well.

11. In the previous Order of the Board, the Board found that the church had long range plans to expand its facilities. The church was unable to do so because a current mortgage agreement relating to the existing church building encumbers the parking lot properties. The Church then testified that it anticipated that it would take five

to seven years to pay off the mortgage. The applicant testified that the state of affairs is still the same at present. In addition, the economic condition with the high interest rates precludes any immediate plans for development of the site.

12. The Department of Transportation, by memorandum dated September 25, 1981, reported that the DOT had reviewed the subject BZA applications and attachments, and no adverse traffic impacts had been identified. However, investigation has revealed that the parking lots continue to be used for commuter parking rather than for short term parking. Their use for commuter parking defies the BZA Order for the previous applications for these parking lots under Nos. 13016 and 13017 which states, in condition "b", that there shall be no all-day commuter parking. The DOT recommended that the applicant demonstrate to the Board the measures that will be implemented to enforce the use of short-term parking and the elimination of commuter parking before the granting of a special exception to continue to operate a parking lot in this R-5-B District. The Board concurs with the DOT recommendation.

13. Advisory Neighborhood Commission 2B, by letter of October 28, 1981 and at the public hearing, advised that at the meeting of October 14, 1981, the Commission voted unanimously to oppose this application. It noted that, in February 1977, the ANC advised the Board it would support continuation of the subject parking lot for two or three more years. The Board's Order said at that time that the lot could be in operation for two more years. It was the neighborhood's hope and the Church's stated intention that housing for the elderly would be constructed in the near future on this R-5-B property. Thus far, development has not occurred and plans do not seem to be materializing in that direction. As noted in previous testimony, the ANC would be happy to work with the Church in finding a program in the Department of Housing that would be in line with its plans for housing for the elderly or others in need of it. The ANC further noted that Commissioner Ralph Bristol in whose Single Member District the lot falls reports the lot is now used for commuter parking in contradiction of the Board's prior Order. The ANC noted that the residential parking sticker program has been very effective in Dupont Circle and that public transportation to the area increases and improves constantly, obviating the need for parking lots of this type.

14. The Board is required by statute to give great weight to the issues and concerns of the ANC. The Board concurs with the ANC's concern as to commuter parking and will address this concern below. As to the housing issues, the Board notes that the relief sought is through a special exception and not a use variance. The applicant has no

burden to prove that the site can't be used for residential housing facilities. The Board however, applauded the ANC in reaching out to assist the applicant in finding suitable methods to develop the site.

15. Ms. Anne Sellin, representing the Dupont Circle Citizens Association testified at the public hearing that there was no question that the lots were clean. The main concerns of the DCCA were that the lots still continued to be used for commuter parking and that the lot in BZA application No. 13592 parked cars in public space. Ms. Sellin reported that on three occasions immediately prior to the public hearing date she visited the site. In addition, Ms. Sellin reviewed with the Board her survey dated October 28, 1981, 9:30 A.M. depicting twelve cars with Maryland, District of Columbia and Virginia license plates parked on the public space. The DCCA was particularly concerned since both these issues of commuter parking and parking on public space were brought before the Board at the prior public hearing on these applications and were recited in the Board's last Order. At that time the applicant had advised the Board that the attendant was unaware that he could not allow parking in the public space and promised that it would not happen again.

16. The lessee responded that there was an area of space measuring approximately eight feet from the wheel stops on the perimeter of the parking lot to the sidewalk on both P and 15th Streets. It was the lessee's opinion that it was not public space but the building line which matched up with the stoops of the Church on 15th Street and the gardens and stoops of the residences on P Street. The lessee did not deny that some cars were parked in this area.

17. The Board at the close of the public hearing left the record open for the applicant to submit a comprehensive plan for its termination of commuter parking and a plat drawn to scale showing the location and dimensions of the parking spaces, driveways, building restriction lines and wheel stop markings. The applicant, by letter dated November 16, 1981, Exhibit No. 21 of the record, advised that it will advise the public that no commuter parking is allowed on the lots, a sign will be placed on the lots advising that short-term parking only is available and that the owner will monitor regularly the day time activities of the lessee to assure compliance with the conditions of the BZA Order. The owner also advised the Board that the Church is still under the continuing mortgage liability on the lots in question and cannot as yet develop the property for housing. However, the Church is committed to development of the lots and shall pursue all avenues for funding. In this connection the Church would be pleased to receive any assistance possible from the ANC in finding a program at HUD that would finance housing for the elderly.

18. The Board finds that the plan of the applicant to terminate commuter parking, if implemented, is acceptable to achieve that goal.

19. The plat submitted by the applicant on November 3, 1981, marked as Exhibit No. 26 of the record, did not comply with the request of the Board. By letter of December 7, 1981, the Board advised the applicant that it had deferred a decision on the application since it found the plat submitted to be unresponsive to the Board's request for information as to parking layout, building restriction lines, etc. It did not show the location of any of the parking spaces or access lanes on the lot.

20. The Board again requested the applicant to submit a plat responsive to the matters raised at the public hearing as set forth in Finding of Fact No. 17. The applicant submitted a further plat marked as Exhibit No. 28 of the record.

21. Upon review of that plat, the Board finds as to the Church Street lot, No. 13591, that there are thirty-five parking spaces on that lot. The spaces are arranged in three rows with access from a twenty-two foot aisle in the center. Two spaces have access directly from the ten foot public alley at the rear. No parking on public space occurred.

22. As to the P Street lot, No. 13592, the Board finds that there is no indication of the number of spaces, or where access drives are located. The plat shows fourteen lanes each 7.38 feet wide, but gives no indication of how many spaces are allocated in each lane. The plat further evidences concrete wheel stops in the easternmost lane, which reduces the already narrow 7.38 foot width to something less than that. The Board finds that the parking layout for this lot is unsatisfactory, in that there is no provision for access into the lot from P Street and the lanes are too narrow. All maneuvering or access must occur in public streets or alleys. The Board further finds that, based on review of the plat marked as Exhibit No. 28, the diagram submitted by Ms. Anne Sellin of the Dupont Circle Citizens Association, the testimony of the rector of the Church at the hearing, and the applicant's own photographs submitted with the application, marked as Exhibit No. 4 of the record, the applicant was parking cars in public space, in direct contradiction of the previous Order of the Board in Case No. 13016. Only since the hearing has the applicant stopped parking cars in public space.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking two special exceptions, the granting of which requires a showing through substantial evidence that the applicant has complied with the requirements of Paragraph 3104.44 and that the relief requested can be granted under Sub-section 8207.2 as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property. The Board concludes that with the execution of the plan to eliminate commuter parking, the applicant has met its burden of proof as to application No. 13591. The parking layout submitted reflects a plan that can function on the lot. With the exception of the commuter parking ban, the lot has been operated in accordance with the prior Orders of the Board. This lot has not created any dangerous or objectionable traffic conditions. With the implementation of a specific prohibition on commuter parking, the lot can be continued as consistent with the general purpose and intent of the Zoning Regulations.

The Board further concludes that the burden of proof has not been met as to application No. 13592. The applicant persisted in defiance of the Board's prior Order to park on public space with the ensuing adverse affect on neighboring property. The Board notes that at the public hearing, the lessee argued adamantly that public space had not been violated and that parking was within the building restriction line. As set forth in Finding No. 22, the record reflects to the contrary. In addition, the parking lot layout submitted is not functional, and requires use of public alleys and streets for maneuvering.

The Board notes that although the parking lots have been in existence for many years through continuances granted by the Board, the applicant's past history of operation under a special exception does not mandate continuance where there has been a change of conditions and other considerations materially affecting the merits of the subject matter. The Board is of the opinion that the persistence of the applicant to abuse public space in application No. 13592 constitutes such a change of conditions and a consideration materially affecting the merits. Accordingly, it is ORDERED that application No. 13592 is DENIED. The applicant is hereby directed to take all necessary and appropriate measures to insure that no parking shall occur on lots 66, 92 and 93 in Square 194.

It is further ORDERED that application No. 13591 is GRANTED SUBJECT to the following CONDITIONS:

- A. Approval shall be for a period of THREE YEARS from the date of expiration of the previous certificate of occupancy, namely, from August 26, 1981.
- B. There shall be no parking in public space.
- C. The applicant shall not permit cars to be parked for more than six hours between the hours of 8:00 A.M. and 6:00 P.M.
- D. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
- E. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
- F. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space. The applicant shall keep the public area adjoining the parking lot free of refuse and debris.
- G. All parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.
- H. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.
- I. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.

VOTE: As to application No. 13591: 5-0 (Connie Fortune, William F. McIntosh, Douglas J. Patton, Walter B. Lewis and Charles R. Norris to GRANT).

As to application No. 13592: 5-0 (Connie Fortune, William F. McIntosh, Douglas J. Patton, Walter B. Lewis and Charles R. Norris to DENY).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: JUN - 4 1982

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS AND INSPECTIONS.